

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

RICHARD TODD MITCHELL,)
)
Petitioner,)
)
v.) Case No. CIV-20-01202-JD
)
)
JANET DOWLING, Warden,)
)
Respondent.)

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is a Report and Recommendation [Doc. No. 22] issued by United States Magistrate Judge Amanda Maxfield Green on September 8, 2021. The Report and Recommendation recommends that Petitioner Richard Todd Mitchell's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [Doc. No. 1] be dismissed without prejudice under *Younger v. Harris*, 401 U.S. 37 (1971),¹ that Respondent's Motion to Dismiss for Failure to Exhaust State Court Remedies [Doc. No. 18] be granted, and that Petitioner's Motion for Stay and Abeyance [Doc. No. 3] and Motion to Amend [Doc. No. 4] be denied.

The Magistrate Judge advised Petitioner that the deadline to file an objection to the Report and Recommendation was September 29, 2021, and that Petitioner's failure to timely object would waive his right to appellate review of the legal and factual issues in the recommended dismissal. [*See* Doc. No. 22 at 11–12]. *See also Moore v. United*

¹ The state court proceeding remains pending as it was on the date of Judge Green's Report and Recommendation. *See* <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2014-317&cmid=3079242> (last visited Oct. 20, 2021).

States, 950 F.2d 656, 659 (10th Cir. 1991). Petitioner did not file an objection to the Report and Recommendation or request an extension of time to do so.

Accordingly, the Court ACCEPTS and ADOPTS the Report and Recommendation [Doc. No. 22] in its entirety. For the reasons stated in the Report and Recommendation, the Court GRANTS Respondent's Motion to Dismiss [Doc. No. 18] and DISMISSES Petitioner's Petition for Writ of Habeas Corpus [Doc. No. 1] without prejudice to refiling. The Court further DENIES Petitioner's Motion for Stay and Abeyance [Doc. No. 3] and Motion to Amend [Doc. No. 4].

Under Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” To obtain a certificate of appealability, Petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Petitioner can satisfy this standard by demonstrating that jurists of reason could debate whether the petition should have been resolved in a different manner or that the issues presented are adequate to deserve encouragement to proceed further.

Slack v. McDaniel, 529 U.S. 473, 484 (2000); *see also Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012). The Court finds that reasonable jurists could not debate the Court’s determination that Petitioner’s habeas petition is subject to dismissal without prejudice. Because Petitioner cannot make the required showing under the statute and Supreme Court precedent, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED this 20th day of October 2021.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE